

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 3:03-cr-134

MICHAEL STACY WILBURN,

Defendant.

**MEMORANDUM OPINION AND JUDGMENT ORDER**

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Expedited consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

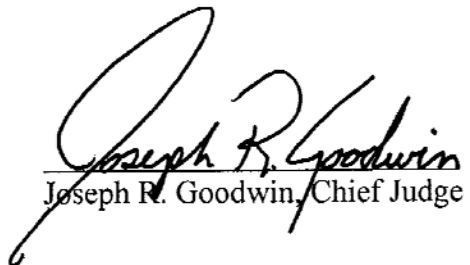
The defendant's original total offense level was 31, and the defendant's criminal history category was III. This resulted in an original guideline range of 135 to 168 months imprisonment.

The Court sentenced the defendant to 135 months.

The United States has indicated that it does not object to a two-level reduction in the defendant's sentence. Based on the foregoing considerations, the defendant's motion is **GRANTED**. The Court **ORDERS** that the defendant's base offense level be reduced by two levels, resulting in a new total offense level of 29, and a guideline range of 108 to 135 months. Because the defendant is subject to a mandatory minimum sentence of 120 months, the mandatory minimum becomes the bottom of the guideline range, resulting in a guideline range of 120 to 135 months. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of **120** months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, the Federal Bureau of Prisons and the United States Marshals.

ENTER: June 17, 2008



Joseph R. Goodwin, Chief Judge